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09/237,687	01/26/1999	ROBERT A. HEIBERGER	1671	7198

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EXAMINER

KIM, CHRISTOPHER S

ART UNIT PAPER NUMBER

3752

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Please find below and/or attached an Office communication concerning this application or proceeding.

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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Paper No. 31

Application Number: 09/237,687
Filing Date: January 26, 1999
Appellant(s): HEIBERGER, ROBERT A.

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GROUP 3700

Timothy Martin
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed November 13, 2003.

(1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is correct.

(4) *Status of Amendments After Final*

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) *Summary of Invention*

The summary of invention contained in the brief is correct.

(6) *Issues*

The appellant's statement of the issues in the brief is substantially correct. The changes are as follows: Does Perlmutter teach a valve body rotatable within a sleeve with an ear configured such that, upon rotation, the ear will act against a guide member to deform the valve body and become disengaged from a slot thereby to allow removal of the valve body from the sleeve upon longitudinal movement of the valve body relative to the sleeve?

(7) *Grouping of Claims*

Appellant's brief includes a statement that claims 1, 5, 7 and 9 stand or fall together and provides reasons as set forth in 37 CFR 1.192(c)(7) and (c)(8).

(8) Claims Appealed

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) Prior Art of Record

5,145,094

Perlmutter

9-1992

(10) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1, 5, 7 and 9 stand rejected under 35 U.S.C. 102(b) as being anticipated by Perlmutter (5,145,094).

Perlmutter discloses a closure comprising: a cap member 10; a valve body 26; an ear 41; a longitudinal slot (between members 19). The elasticity/flexibility of the body and cap member will allow the functional recitation of "said ear will act against said guide member to deform said valve body and become disengaged from the slot thereby to allow removal of said valve body from said sleeve upon longitudinal movement of said valve body relative to said sleeve."

(11) Response to Argument

The following is the relevant portion of claim 1 at issue.

...said valve body constructed of a stiff bendable material and having an ear projecting radially outward...said valve body rotatable within said sleeve with said ear configured such that, upon rotation, said ear will act against said guide member to deform said valve body and become disengaged from the slot thereby to allow removal of said valve body from said sleeve upon longitudinal movement of said valve body relative to said sleeve.

Appeal Brief, Appendix A, page 1, claim 1, lines 8-16. Appellant relies on the Board Decision of October 21, 2002 holding

[I]t is our determination that the space circumscribed by skirt 14 of the cap member as shown in Figure 1 would inherently permit a user to insert a tool to press the flanges 41 of the closure member together permitting the user to grab the end wall 29 of the closure member and remove the closure member 26 from the cap member 10. (underline added)

Decision on Appeal, October 21, 2002, p 15, lines 10-14. Appellant argues that "the ear itself was configured to cause the deformation without the need for a tool." Appellant asserts that "[t]he Examiner simply dismissed out-of-hand this limitation stating in essence that Perlmutter would allow this functional recitation." Appeal Brief, page 9, lines 7-9. Appellant has failed to appreciate the disclosure of Purlmutter and the decision by the Board. Based on Purlmutter's teaching of plastic cap member 10 the Board decision holds that the valve body of Purlmutter is inherently bendable/deformable/movable in that the flanges 41 can be pressed together. The dictionary defines "deform" as

To alter the shape of by pressure or stress.

The American Heritage® Dictionary of the English Language, Third Edition copyright © 1992 by Houghton Mifflin Company. Additionally, Purlmutter discloses, in column 3, lines 13-20, that valve body 26 is deformable since sealer bead 39, a part of the valve body and made of the same material, is **deformable**. Purlmutter discloses, in column 4, lines 45-55, that the valve body 26 can be moved in a rotary fashion. The flange/ear 41 contacts guide member 19, 19a as shown in Purlmutter's figures 3 and 12. The valve body is **rotatable, and upon rotation**, the flange/ear 41 will act against the guide member 19, 19a to deform the valve body 26 (and/or the flange/ear 41 which is part of the valve body as defined by appellant's claim construction). "Deform" has been



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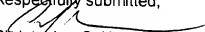
Art Unit: 3752


interpreted to include elastic, plastic/permanent, or even destructive change in shape.

Neither appellant's claim nor specification is limiting as to the definition of "deform."

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,


Christopher S. Kim
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Art Unit 3752

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January 23, 2004

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